

PT 97-20
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

BROMENN FOUNDATION)		
Applicant)		
)	Docket #s	94-57-38
v.)		95-57-66
)	Parcel Index #	14-33-128-013
THE DEPARTMENT OF REVENUE)		14-33-131-007
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. William B. Lawrence appeared on behalf of BroMenn Foundation.

Synopsis:

The hearing in these matters was held at the Willard Ice Building, 101 West Jefferson Street, Springfield, Illinois, on May 30, 1996, to determine whether or not McLean County parcels numbered 14-33-128-013, the thrift shop; and 14-33-131-007, the parking lot, should be exempt from real estate taxation for the 1994 and 1995 assessment years, respectively.

Mr. Leon Schmucker, Vice President of BroMenn Foundation (hereinafter referred to as the "Foundation"), and Ms. Elise Johnson, manager of the thrift shop, were present and testified on behalf of the Foundation.

Brokaw-Mennonite Association is the parent corporation and sole member of each of its subsidiaries. Two of its subsidiaries are the Foundation and BroMenn Healthcare (hereinafter referred to as "Healthcare"). BroMenn Service

Auxiliary (hereinafter referred to as the "Auxiliary") is a subsidiary of Healthcare. The Auxiliary operates the thrift shop.

The issues in this matter include first, whether the Foundation owned parcel No. 14-33-128-013, the thrift shop, during all or part of the 1994 assessment year. The second issue is whether the Foundation owned parcel No. 14-33-131-007, the parking lot, during the 1995 assessment year. The third issue is whether the Foundation held parcel No. 14-33-128-013 in trust for the use and benefit of the thrift shop, an entity of Healthcare. The next issue is whether Healthcare is a charitable organization. Another issue is whether Healthcare, through the thrift shop, either prepared to use this parcel for charitable purposes, or actually did use this parcel for charitable purposes, pursuant to 35 **ILCS** 200/15-65 during all or part of the 1994 assessment year. The final issue is whether parcel No. 14-33-131-007, the parking lot, was used for exempt purposes pursuant to 35 **ILCS** 200/15-125, during the 1995 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the Foundation owned parcel No. 14-33-128-013, the thrift shop, during the period February 4, 1994, through December 31, 1994. It is also determined that the Foundation owned parcel No. 14-33-131-007, the parking lot, during the entire 1995 assessment year. It is further determined that the Foundation held parcel No. 14-33-128-013 in trust for the use and benefit of the thrift shop, an entity of Healthcare, during the period February 4, 1994 through December 31, 1994. It is also determined that Healthcare is a charitable organization. In addition, it is determined that Healthcare, through the thrift shop, during the period February 4, 1994 through June 21, 1994, was in the process of adapting the building on parcel No. 14-33-128-013 for charitable use, and actually used said building for charitable purposes, pursuant to 35 **ILCS** 200/15-65, during the period June 21, 1994 through December

31, 1994. Finally, it is determined that the Foundation did not use parcel No. 14-33-131-007, the parking lot, for exempt purposes pursuant to 35 ILCS 200/15-125, during the 1995 assessment year. Therefore, McLean County parcel No. 14-33-128-013, the thrift shop, qualified for exemption during the period February 4, 1994, through December 31, 1994, and parcel No. 14-33-131-007, the parking lot, did not qualify for exemption during the 1995 assessment year.

Findings of Fact:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in these matters, namely that parcel No. 14-33-128-013, the thrift shop, and parcel No. 14-33-131-007, the parking lot, did not qualify for exemption during the 1994 and 1995 assessment years, respectively, was established by the admission in evidence of Department's Exhibits 1 through 5B, and the documents in the file in Docket No. 95-57-66.

2. On March 27, 1995, The McLean County Board of Review transmitted an Application for Property Tax Exemption To Board of Review, concerning parcel No. 14-33-128-013, the thrift shop, for the 1994 assessment year, to the Department. (Dept. Ex. No. 1)

3. On November 22, 1995, the Department denied the exemption of the Foundation for this parcel for the 1994 assessment year. (Dept. Ex. No. 2)

4. On December 7, 1995, the attorney for the Foundation requested a formal hearing in this matter. (Dept. Ex. No. 3)

5. The hearing in this matter, which was held on May 30, 1996, was held pursuant to that request.

6. The Foundation acquired parcel No. 14-33-128-013, the thrift shop, pursuant to a warranty deed dated February 4, 1994. (Dept. Ex. No. 1B)

7. The Foundation was incorporated pursuant to the "General Not For Profit Corporation Act" of Illinois, on November 1, 1985. (Dept. Ex. No. 1C)

8. The purpose clause of the Foundation, as amended, reads as follows:

The corporation is organized as a not-for-profit corporation exclusively for charitable, educational and scientific purposes within the meaning of Section 501 (c)(3) of the Internal Revenue Code, to support and encourage health care services through providing financial and fundraising assistance and in all other relevant ways. (Dept. Ex. No. 1D)

9. The Brokaw-Mennonite Association is the parent corporation and sole member of each of its subsidiaries. One of its subsidiaries is the Foundation. Another of its subsidiaries is Healthcare. The Auxiliary is a subsidiary of Healthcare. (Tr. pp. 12-19, Dept. Ex. Nos. 1F & 1G)

10. Healthcare operates two acute care hospitals, one in Bloomington-Normal and one in Eureka. (Tr. p. 14)

11. I take Administrative Notice of the fact that Healthcare has been determined by the Director of Revenue to be a charitable organization. See Docket Nos. 92-57-7, 92-102-27, 92-102-28, 92-102-29 and 94-102-10.

12. The Foundation provided funds to support the construction of a 21 million dollar medical center. The Foundation also purchased medical equipment and has supported the school of nursing and various other activities of the various BroMenn organizations. (Tr. p. 18)

13. The Auxiliary provides volunteer services for the BroMenn organizations. It operates the thrift shop, two gift shops, and the Atrium Cafe which provides food service to employees, patients, and visitors to the BroMenn facilities. (Tr. p. 20)

14. The funds raised by the Auxiliary go to the Foundation which disperses those funds as directed by the Auxiliary. (Tr. p. 23)

15. The thrift shop lost its lease at its former location. It then requested the Foundation to locate and acquire a suitable property from which to operate a thrift shop. The property which was acquired was parcel No. 14-33-128-013, located on Main Street in a commercial area of south Normal. (Tr. pp. 17 & 18) The Auxiliary occupies the thrift shop pursuant to an oral lease but does not pay rent to the Foundation. (Tr. pp. 16 & 17, & 27)

16. After the Foundation acquired this parcel and the building thereon, it was necessary to put a new roof on the building and also to install a new sewage system. The walls had to be thoroughly washed since the building had previously been a pet store. Finally, the interior walls had to be reconstructed to facilitate the thrift shop's use of the property. (Tr. p. 49)

17. The floor plan indicates that the thrift shop used the entire building on parcel No. 14-33-128-013 for the purposes of the thrift shop during the period June 21, 1994, through December 31, 1994. (Dept. Ex. No. 3E)

18. During the period June 21, 1994, through December 31, 1994, the thrift shop was open Monday through Friday 10:00 A.M. to 5:00 P.M. and Saturdays from 10:00 A.M. to 4:00 P.M. The thrift shop, in addition to the full time manager, Ms. Elise Johnson, had three part time employees and approximately 35 volunteers during 1994. The volunteers worked once a week for approximately 4 hours. The thrift shop tried to have at least 2 of the paid staff working along with up to five volunteers each morning and afternoon. (Dept. Ex. No. 3B)

19. The thrift shop attempts to price the items that it has for sale at about the same price as is charged by other thrift stores in the area namely, the Salvation Army, Mission Mart, and Goodwill. (Tr. pp. 39 & 50)

20. The thrift shop sells only donated goods. It does not purchase items for resale. It also does not take goods on consignment. (Tr. pp. 50 & 51, Dept. Ex. No 1)

21. The thrift shop gives approximately 50% of the donations it receives to other charities. The thrift shop gives clothing and other donated goods to burn out victims. The thrift shop also gives clothing and household items to persons who are discharged from the hospital and are in need. (Tr. pp. 40 & 41)

22. By an Application for Hearing, received by the Department on June 12, 1996, requesting a hearing in Docket No. 95-57-66, concerning McLean County Parcel No. 14-33-131-007 which is the parking lot for the thrift shop, the Foundation's attorney requested that Docket No. 95-57-66 be consolidated for purposes of the Department's Recommendation For Disposition with Docket No. 94-57-38.

23. The transcript of the hearing in Docket No. 94-57-38 held on May 30, 1996, included testimony concerning the ownership and use of the parking lot. (Tr. pp. 51-55)

24. The parcel where the thrift shop is located contains approximately 6 to 8 parking spaces. That is not enough parking spaces for the employees, volunteers, and customers of the thrift shop to park their cars. (Tr. p. 52)

25. Consequently, the Foundation acquired parcel No. 14-33-131-007, the parking lot, by a warranty deed on October 25, 1994. This parcel, is located across Main Street and about half a block north of the thrift store parcel. (Dept. Ex. No. 1-0)

26. In addition to employees, volunteers, and customers of the thrift shop, the parking lot is also used by customers of Etchison Spa and Pool, located north of the thrift shop. Customers of the Marathon gas station, which is located across the street, also use this parking lot. No charge is made to Etchison Spa and Pool or the Marathon station for their use of the parking lot. (Tr. pp. 51-55)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

35 **ILCS** 200/15-65 provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity;

(b) beneficent and charitable organizations incorporated in any state of the United States, including organizations whose owner, and no other person, uses the property exclusively for the distribution, sale, or resale of donated goods and related activities and uses all the income from those activities to support the charitable, religious or beneficent activities of the owner, whether or not such activities occur on the property;

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts

of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

The Foundation's purpose clause, as amended, provides that the Foundation is organized to support and encourage health care services through providing financial and fundraising assistance and in all other relevant ways. Both the Foundation and Healthcare are subsidiaries of Brokaw-Mennonite Association. The Auxiliary, which operates the thrift shop, is a subsidiary of Healthcare. Healthcare has been determined to be a charitable organization by the Department in Docket Nos. 92-57-7, 92-102-27, 92-102-28, 92-102-29 and 94-102-10.

The thrift shop requested the Foundation to find and purchase a suitable site for the operation of the thrift shop, which it did. The Foundation, after purchasing parcel No. 14-33-128-013, leased it to the thrift shop pursuant to an oral lease, at no rent. Consequently, I conclude that the Foundation held parcel No. 14-33-128-013 in trust for the use and benefit of the thrift shop. The Illinois Courts have held that property will qualify for exemption where it is held by an organization in trust for the use and benefit of an exempt organization. See People ex. re. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). See also Community Mental Health Council, Inc. v. Department of Revenue, 186 Ill.App.3d 73 (1st Dist. 1989). Finally, in Southern Illinois University Foundation v. Booker, 98 Ill.App.3d 1062 (5th Dist. 1981) the Appellate Court held that where the nonexempt foundation held title to property for the use and benefit of Southern Illinois University, and the University was in possession and had control of the property, said property was owned by the University, an exempt organization, for property tax exemption purposes and therefore qualified for exemption from real estate taxation. That case, I conclude, is similar to the facts here, where the Foundation held bare

legal title to these parcels, in trust for the use and benefit of the thrift shop, an entity of Healthcare, which is an exempt organization. The thrift shop was in possession and had control of the property. I therefore conclude that the thrift shop is the owner of these parcels for real estate taxation purposes.

The Foundation acquired parcel No. 14-33-128-013 on February 4, 1994. The thrift shop opened on this parcel on June 21, 1994. During the period February 4, 1994, through June 21, 1994, the thrift shop had a new roof put on the building, a new sewage system installed, and the building thoroughly cleaned. The interior of the building was then remodeled to facilitate its use as a thrift shop. Illinois Courts have held property to be exempt from taxation where it has been adequately demonstrated that the property is in the actual process of development and adaptation for exempt use. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11 (1924); In re Application of County Collector, 48 Ill.App.3d 572 (1st Dist. 1977); and Weslin Properties, Inc. v. Department of Revenue, 157 Ill.App.3d 580 (2nd Dist. 1987). I therefore conclude that the thrift shop was in the process of adapting this parcel for exempt use during the period February 4, 1994, through June 21, 1994. I further conclude that the thrift shop used parcel No. 14-33-128-013 for charitable purposes pursuant to 35 ILCS 200/15-65 during the period June 21, 1994, through December 31, 1994.

At pages 29 and 30 of the transcript, Mr. Lawrence objected to the Administrative Law Judge asking questions of the Foundation's witnesses. This objection was overruled by the Administrative Law Judge. It is clear from the preceding case law that the party applying for exemption from real estate taxation has the burden of proving that it meets the constitutional and statutory requirements for exemption. On numerous occasions, the Illinois Courts have held that hearing procedures similar to the Department's hearing

procedures under the Property Tax Code, meet the constitutional due process requirements. Reif v. Barrett, 355 Ill. 104 (1934); Department of Finance v. Cohen, 369 Ill. 510 (1938); Sunstrand Corporation v. Department of Revenue, 34 Ill.App.3d 694 (2nd Dist. 1975); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill.App.3d 1036 (2nd Dist. 1978); and Puleo v. Department of Revenue et al., 117 Ill.App.3d 260 (4th Dist. 1983). In addition, it should be pointed out that this proceeding concerns exemption from real estate taxes, which are assessed and collected by the counties. The funds derived therefrom are available for use by said counties and not the state. I therefore conclude that the objection of the attorney for the Foundation was without merit.

With regard to McLean County Parcel No. 14-33-131-007, the parking lot, 35 **ILCS** 200/15-125 provides in part as follows:

Parking areas, not leased or used for profit, when used as a part of a use for which an exemption is provided by this Code and owned by any...charitable institution which meets the qualifications for exemption, are exempt.

Article IX, Section 6 of the Illinois Constitution of 1970 as previously set forth, provides that the General Assembly may exempt certain specifically described property. This the General Assembly has done in 35 **ILCS** 200/15-125. Reading the Constitutional provision and Section 200/15-125 together, it is clear that parking lots must be exclusively used by persons visiting or employed by a charitable organization as defined in 35 **ILCS** 200/15-65 and not used by any other persons. In this case, the testimony is clear that the persons parking on parcel No. 14-33-131-007 also included customers of Etchison Spa and Pool and the Marathon gas station. Clearly, both Etchison Spa and Pool and the Marathon gas station are for profit-businesses, which do not qualify for exemption pursuant to the Constitutional provision and Section 200/15-125. The testimony indicates that these uses by Etchison Spa and Pool and the Marathon gas station

are more than merely incidental. Where, as here, the property as a whole was used for both exempt and nonexempt purposes, it will qualify for exemption only if the exempt use is the primary use, and the nonexempt use is only incidental. That is certainly not the case here. I therefore conclude that parcel No. 14-33-131-007 does not qualify for exemption for the 1995 assessment year.

I therefore recommend that McLean County Parcel No 14-33-128-013 be exempt from real estate taxation for 91% of the 1994 assessment year.

I further recommend that McLean County Parcel No. 14-33-131-007 remain on the tax rolls for the 1995 assessment year and be assessed to BroMenn Foundation, for said assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
June 5, 1997